



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 6898
JBER, ALASKA, 99506-0898
OCT 06 2014

Regulatory Division
POA-2006-753, PacRim Coal, LP

Dan Graham, PE
Chuitna Coal Project Manager
PacRim Coal, LP
1007 W 3rd Ave, Ste 304
Anchorage, AK 99501

Dear Mr. Graham:

This letter is in response to your request for a Department of the Army (DA) jurisdictional determination for a 13,654-acre site proposed for the Chuitna Coal Mine Project. The JD request, as well as the submitted application for a Department of the Army permit, has been assigned file number POA-2006-753, which should be referred to in all correspondence with us.

The site is located on the west side of Cook Inlet in the Chuitna Watershed in the Kenai Peninsula Borough of Alaska, approximately 12 miles northwest of the Native Village of Tyonek, and 45 miles west of Anchorage. There are three main component parts of the proposed project, with the sites referred to as the 'Ladd Landing Development', the 'Project Infrastructure and Camp Facilities', and the 'Mine Site'. The locations of these three adjoining areas are as follows:

- Ladd Landing Development: located in T. 12 N., R. 10 W., Sections 19, 20, 27, 28, and 29, Seward Meridian, at Latitude: 61.1165°, and Longitude: -151.1211°
- Project Infrastructure and Camp Facilities: located in T. 12 N, R. 10 W, Section 19; T. 12 N, R. 12 W, Section 1; T. 12 N, R. 11 W, Sections 4, 5, 6, 8, 9 and 10; T. 13 N, R. 11 W., Sections 29, 31, 32, and 33; Seward Meridian, at Latitude: 61.1765°, Longitude: -151.2830°
- Mine Site: located in T. 13 N., R. 12 W., Sections 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; T. 12 N., R. 12 W., Sections 2, 3 and 4, Seward Meridian, at Latitude: 61.1943°, Longitude: -151.3901°

The current landowners are the Alaska Mental Health Trust Authority, Tyonek Native Corporation, and the Kenai Peninsula Borough.

Based on our review of the information you provided, and available to our office, we have preliminarily determined that there are a total of 6,129 acres of waters of the United States under the Corps' regulatory jurisdiction within the 13,654-acre site. These waters of the United States are shown on the 5 drawings prepared by HDR, Inc., as consultants for PacRim Coal, LLP, dated and last revised on June 27, 2014, and entitled: "Chuitna Coal Project Wetlands and Waterbodies - Mine Area North, Mine Area South, Facilities Northwest, Facilities Southeast, and LADD Landing". The 13,654-acre site is indicated by the boundary line labeled "HDR Wetland/Vegetation Mapping Boundary." These waters of the United States consist of the following:

- 5,307 acres of wetlands
- 222 acres of open freshwater (ponds, lakes)
- 66 acres (98 miles) of intermittent and perennial riverine waters (streams, rivers)
- 534 acres of estuarine waters below the high tide line (of which 531 acres are below the mean high tide).

Enclosed is a Preliminary Jurisdictional Determination (PJD) Form. Please sign and return the form to our office. A PJD is not appealable. At any time, you have the right to request and obtain an Approved Jurisdictional Determination, which can be appealed. If it is your intent to request an Approved JD, do not begin work until one is obtained.

Department of the Army authorization is required if you propose to place dredged and/or fill material into waters of the U.S., including wetlands, and/or perform work in navigable waters of the U.S.

Section 404 of the Clean Water Act requires that a DA permit be obtained for the placement or discharge of dredged and/or fill material into waters of the U.S., including jurisdictional wetlands (33 U.S.C. 1344). The Corps defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for structures or work in or affecting navigable waters of the U.S. (33 U.S.C. 403). Section 10 waters are those waters subject to the ebb and flow of the tide shoreward to the mean high tide, and/or other waters identified by the Alaska District.

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

If you have questions, please contact me via email at heidi.firstencel@usace.army.mil, by mail at the address above, by phone at (907) 753-2778, or toll free from within Alaska at (800) 478-2712. For more information about the Regulatory Program, please visit our website at <http://www.poa.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,



Heidi Firstencel
Project Manager

Enclosures

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): September 29, 2014

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Dan Graham, PE
Chuitna Coal Project Manager
PacRim Coal, LP
1007 W 3rd Ave, Ste 304
Anchorage, AK 99501

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

POA-RD, PacRim Coal, LP, POA-2006-753

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: AK

Borough: Kenai

City: near Tyonek

Coordinates of site: Universal Transverse Mercator:

- Ladd Landing Development: located in T. 12 N., R. 10 W., Sections 19, 20, 27, 28, and 29, Seward Meridian, at Latitude: 61.1165°, and Longitude: -151.1211°
- Project Infrastructure and Camp Facilities: located in T. 12 N, R. 10 W, Section 19; T. 12 N, R. 12 W, Section 1; T. 12 N, R. 11 W, Sections 4, 5, 6, 8, 9 and 10; T. 13 N, R. 11 W., Sections 29, 31, 32, and 33; Seward Meridian, at Latitude: 61.1765°, Longitude: -151.2830°
- Mine Site: located in T. 13 N., R. 12 W., Sections 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; T. 12 N., R. 12 W., Sections 2, 3 and 4, Seward Meridian, at Latitude: 61.1943°, Longitude: -151.3901°

Authority: ☒ Section 404 ☒ Section 10

Name of nearest waterbody: Cook Inlet, Chuitna River

Identify (estimate) amount of waters in the review area:

Non-wetland waters:

97 miles (65 acres) - Cowardin Class: Riverine Perennial

1 mile (1 acre) - Cowardin Class: Riverine Intermittent

222 acres - Cowardin Class: Lacustrine

Wetlands: 5,307 acres.

Cowardin Class: Multiple

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: Cook Inlet

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination.

Date: September 26, 2014

☐ Field Determination.

Date(s): *Date*

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. §331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Five drawings prepared by HDR, Inc., as consultants for PacRim Coal, LLP, dated and last revised on June 27, 2014, and entitled: "Chuitna Coal Project Wetlands and Waterbodies - Mine Area North, Mine Area South, Facilities Northwest, Facilities SouthEast, and LADD Landing (overlaid on air photographs). *
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: *Click here to enter text.*
- ☐ Corps navigable waters' study: *Click here to enter text.*
- ☐ U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name: *Click here to enter text.*
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: *Click here to enter text.*
- ☐ National wetlands inventory map(s). Cite name: *Click here to enter text.*
- ☐ State/Local wetland inventory map(s): *Click here to enter text.*
- ☐ FEMA/FIRM maps: *Click here to enter text.*
- ☐ 100-year Floodplain Elevation is: *Click here to enter text.*
(National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): * see above
or ☐ Other (Name & Date): *Click here to enter text.*
- ☐ Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- ☐ Applicable/supporting case law: *Click here to enter text.*
- ☐ Applicable/supporting scientific literature: *Click here to enter text.*
- ☒ Other information (please specify): <http://www.kenaiwetlands.net/MapUnitDescriptions/SGx.htm>,

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of Regulatory Project
Manager (REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)